Fulton County Superior Court
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Che Alexander, Clerk

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JULIE ADAMS, in her official capacity as a member of the Fulton County Board of Elections and Registration, a/k/a Fulton County Board of Registration and Elections, Plaintiff, v. FULTON COUNTY, GEORGIA Defendant, & DEMOCRATIC NATIONAL COMMITTEE & DEMOCRATIC PARTY OF GEORGIA, Defendant-Intervenors.	Civil Action File No. 24CV011584

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DEFENDANT FULTON COUNTY, GEORGIA'S MOTION TO DISMISS AND TRIAL BRIEF

Joseph J. Siegelman
Sanjay S. Karnik (*pro hac vice pending*)
Rachel N. Lugay

CHILIVIS, GRUBMAN, WARNER & BERRY LLP
1834 Independence Square
Atlanta, Georgia 30338

Counsel for Defendants

INTRODUCTION

In the State of Georgia, the qualified and registered voters elect their chosen leaders of government through a primary and general election process clearly outlined in the Georgia Election Code, O.C.G.A. §§ 21-2-1, *et. seq* ("Election Code"). The votes from every polling station and every precinct are tabulated, and through a rigorous chain-of-command process outlined in the Code, results are presented to each county's election superintendent for computation. The superintendent for each county then must certify the election.

The unmistakable intent of the General Assembly through the Election Code and the well-established case law of the Supreme Court of Georgia makes clear that the certification of election results by the election superintendent of a county is a mandatory act. Through her petition for declaratory relief, Plaintiff Julie Adams aims to turn this long held and clear legal principle on its head. As a member of the Fulton County Board of Registration and Elections ("BRE"), Plaintiff has no legal power to decide to not certify an election.

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Nothing in the Election Code, or elsewhere in the law, allows for an election superintendent or member thereof to withhold, delay, or deny certification of an election result. Nothing in the Election Code contemplates a scenario where the superintendent fails or refuses to certify the election result. The words "if the superintendent does not certify, then…" (or any sentiment to that effect) simply does not exist because county-level certification is mandatory and not "discretionary" as Plaintiff claims. Accordingly, Plaintiff's Complaint should be dismissed for multiple reasons.

First, Plaintiff's claim is barred by the doctrine of res judicata due to the dismissal of the prior iteration of Plaintiff's lawsuit. Although that case was dismissed

without prejudice, Defendant contends it should have been dismissed with prejudice, which would foreclose adjudication of the present case.

Second, the law is clear that certification of an election by each county's election superintendent is mandatory. The Election Code states in no uncertain terms that the timely certification of an election result precipitates all remaining statutory deadlines and legal means in which to challenge an election result or address any alleged fraud or irregularities. The Georgia Election Code simply does not state that an election superintendent (or a member thereof) can withhold certification, or even contemplate such a scenario. Relatedly, the long-held and undisturbed precedent of numerous Georgia Supreme Court decisions make clear that the responsibility of certifying an election result is a ministerial and mandatory task. The General Assembly and the courts have long been aware of the possibility that a rogue election official might delay, withhold, or refuse certification of election results for political or other improper purposes. Plaintiff Julie Adams is merely the latest election official to make such an attempt.

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Third, even if the Court considers Plaintiff's declaratory request regarding election materials, she provides no other valid legal basis for such items. Her claim for election documents rises and falls with her erroneous claim that county-level certification is discretionary. But in any event, Plaintiff, as a member of the BRE, was timely given the election materials she seeks.

PARTIES AND BACKGROUND

The parties to this matter are the Plaintiff Julie Adams, a member of the Fulton BRE, and Defendant Fulton County, Georgia.[1] Since the 2020 presidential election — and the unending drumbeat of unfounded allegations that the election had been stolen, Fulton County has drawn the ire of those inclined to question the propriety of Georgia elections. As noted in the amicus brief filed in Adams I by _____, "Plaintiff's lawsuit is just the latest attack in an ongoing effort to undermine election processes in" Fulton County. Brief of *Amici Curiae* in Support of Defendants' Motion to Dismiss at 20(July 29, 2024), *Adams I*.

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False accusations have been levied throughout Georgia but especially in Fulton County, which have even led to threats of violence against election workers:

> Fulton County election workers, for example, have experienced numerous racially charged threats. One caller to the County elections office, which consisted of almost entirely Black employees at the time, suggested the workers would be killed by firing squad or hanging, even saying to one employee: "Boy, you better run." Johnny Kauffman, *Inside the Battle for Fulton County's Votes*, Atlanta Magazine (Feb. 3, 2021), https://www.atlantamagazine.com/great-reads/inside-the-battle-for fulton-countysvotes/. Then-Fulton County voter registration chief Ralph Jones, a Black man, was called racial epithets and told he would be shot and have his body dragged by a truck. Linda So, *Trump-inspired Death Threats Are Terrorizing Election Workers*, Reuters (June 11, 2021), https://www.reuters.com/investigates/special-report/usa-trumpgeorgia-threats/.
>
> Most infamously, Rudy Guiliani accused Fulton County election workers Ruby Freeman and Wandrea "Shaye" Moss of passing around USB ports containing votes like "vials of heroin or cocaine." H.R. Rep. No. 117-663, at 45. In response to Giuliani's lies, some extremists threatened Freeman and Moss using racial epithets.

[1] The Democratic National Committee and Democratic Party of Georgia have intervened and are also parties as defendant-intervenors.

- "You are dead. . . . I hope you and your family live in fear for their lives they ending soon. . . . Fucking kill yourself now so we can save AMNO! Stupid iboc [n-word] casket dweller! . . . ." Exhibit B (Excerpt of Exhibits from *Freeman v. Guiliani*, 1:21-cv-03354-BAH (D.D.C.).

(1)

- "You fucking [n-word], You going to jail" Exhibit B (Excerpt of Exhibits from *Freeman v. Guiliani*, 1:21-cv-03354-BAH (D.D.C.).

> Freeman and Moss also received threats that included clear allusions to historical violence against Black Georgians who exercised political rights. For example, one online comment read: "Be glad it's 2020 and not 1920." Kayla Epstein, *Georgia election worker feared for her life after Rudy Giuliani's election fraud claims*, BBC (Dec. 12, 2023), https://www.bbc.com/news/world-us-canada-67696511.

Id. at 20-21.

Although the present matter concerns a purely legal question, *i.e.*, whether Plaintiff has discretion to delay or altogether decline to certify election results, Plaintiff uses her Complaint to lob innuendo that Fulton County election results should not be trusted, asserting in her Complaint unsubstantiated allegations of misconduct which have no bearing on resolution of the legal question at hand. *See* Compl. ¶¶ 81-90.

Making unsubstantiated allegations of election misconduct is not new to the Plaintiff or unique to this action. Prior to this action being filed and indeed before Plaintiff had become a member of the Fulton County BRE, Plaintiff has fed into conspiracies theories about Fulton County elections being untrustworthy. For example, at a partisan poll work training, Plaintiff espoused a baseless claim about mishandling ballots by Fulton County election workers, saying "these people that looked less than clean cut kept the ballots for two to three days. . . . "So I'm picturing these guys, they're sitting in their apartments, they have their buddies over, they're drinking beer, might be smoking pot and they've got the ballots there from Fulton County." 1:07:55-1:08:35

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RELEVANT PROCEDURAL HISTORY AND RELATED CASES

1. Adams I

Plaintiff's original lawsuit *Julie Adams v. Fulton County Board of Registration and Elections, et al.*, Civil Action No. 24CV006566 ("*Adams I*") was filed May 22, 2024 and the defendants served June 18, 2024. Plaintiff brought claims for declaratory judgment and injunctive relief and moved for an interlocutory injunction. In response to the defendants' motion to dismiss and response to Plaintiff's motion for an interlocutory injunction, Plaintiff dropped her request for injunctive relief, sought to amend her complaint to name Fulton County only and add a claim for mandamus. On September 9, 2024, the Court denied Plaintiff's motion to make Fulton County the sole defendant and granted the defendants' motion to dismiss, ordering the dismissal of *Adams I* without prejudice.

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2. Vasu Abhiraman, et al. v. State Election Board[2]

Prior to *Adams I* being dismissed, several plaintiffs on August 26, 2024 filed suit against the State Elections Board challenging the legality of two rules enacted by the Board. Those rules, which the plaintiffs in *Abhiraman* call the "Reasonable Inquiry Rule" and the "Examination Rule," appear to confer the same or similar authority that Plaintiff in the present case asserts she already has (notwithstanding the enactment or legality of those rules). Because of the related issues, the *Abhiraman* plaintiffs filed their case as a related case to *Adams I*, so it could be heard by this Court alongside *Adams I*. Like in *Adams I*, the plaintiffs in *Abhiraman* seek similar declaratory relief.

[2] Civil Action No. 24CV010786.

On September 10, 2024, this Court issued a scheduling order setting *Abhiraman* for a bench trial on October 1, 2024. Because *Adams I* had been dismissed, the scheduling order and bench trial applied only to *Abhiraman*.

3. Adams II

On September 12, 2024, a few days after *Adams I* had been dismissed, Plaintiff refiled the present case asserting a single declaratory judgment claim and naming only Fulton County as the defendant ("*Adams II*"). Fulton County acknowledged service, and, with the parties' consent, this Court promptly realigned Plaintiff's case with *Abhiraman*, setting *Adams II* to be heard with *Abhiraman* on October 1, 2024. The Court modified the *Abhiraman* scheduling order as applied to the *Adams II* parties, permitting the *Adams II* parties until noon on September 27, 2024 to file pre-trial briefs.

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STATEMENT OF FACTS

Plaintiff makes numerous factual allegations in her Complaint which do not advance her single claim for declaratory judgment. Defendant therefore does not address those allegations, many of which are prejudicial to Defendant, even when exaggerated or outright false, because they have no bearing on the resolution of Plaintiff's claim. Defendant recites herein only those facts necessary for resolution of Defendant's motion to dismiss and Plaintiff's claim.

Plaintiff's Allegations

Plaintiff is a duly appointed member of the BRE who swore an oath to prevent "fraud, deceit, or abuse" in the carrying of primaries and elections. (Compl. ¶ 4). Plaintiff describes certain duties of election superintendents under Title 21, Ch. 2. (*Id.* ¶¶ 16-18, 20-27, 102-104). She alleges that these laws confer discretionary duties with respect to the certification of election results. *Id.* (¶¶ 103-104). Plaintiff alleges that she has "repeatedly sought access to the election processes, systems, records, materials, data, equipment, reports from poll workers, and other vital information ('the Election Materials and Processes') necessary for her, and other BRE members, to perform their statutory duties." (*Id.* ¶ 31). Plaintiff asks the Court to declare that the "duties of the BRE members are discretionary, not ministerial, in nature" and that BRE members are required to have full access to Election Materials and Processes" Compl. p.31.

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Materials Requested by and Provided to Plaintiff

Plaintiff attaches numerous exhibits to her Complaint which are incorporated by reference. These exhibits demonstrate timely access to the information and materials Plaintiff seeks by way of this lawsuit, all provided in compliance with Georgia's election code and statutorily mandated timings set forth therein.

On March 7, 2024, Plaintiff requested numerous election-related documents in advance of the BRE's certification of the Presidential Preference Primary Election on March 12, 2024. (Compl. Ex. 2). Director Williams promptly responded to Plaintiff's request and informed her that it was not possible to accommodate her request as "the majority of these documents are not readily available." *Id.* Plaintiff similarly insisted needing "access to all elements of the Election Materials and Processes of the May 21, 2024, Primary Election" as well. (Compl. ¶ 79). Director Williams offered to Plaintiff that the requested documents could be made available to her and the other BRE members by the morning of certification, and further invited Plaintiff to observe the reconciliation process. (*See* Compl. Ex. 2).

On May 22, 2024, prior to Plaintiff's review of the election materials provided by Defendants,[3] Plaintiff filed a lawsuit against the FCBRE and the Director alleging that she was denied access to essential election materials and processes by which elections in Fulton County are conducted. On As noted in the procedural History section of this brief, Plaintiff's prior lawsuit has been dismissed on sovereign immunity grounds, and has since been refiled as the instant action.

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[3] After Plaintiff filed her initial lawsuit and consistent with the email from Director Williams in response to Plaintiff's request, *see* Compl. Ex. 2, Defendant provided Plaintiff with extensive election records and gave her ample opportunity to review them prior to certification of the May 21, 2024 primary election. *See* May 28, 2024 BRE Meeting, *available at* https://www.youtube.com/watch?v=Rp5uVVslzhg (last accessed July 21, 2024).

STANDARD OF REVIEW

Defendant moves to dismiss pursuant to O.C.G.A. § 9–11–12(b)(6). Under the "standard of review [that] applies to a motion to dismiss for failure to state a claim upon which relief can be granted under OCGA § 9–11–12(b)(6)," the "defendant must demonstrate that Plaintiff is not entitled to relief under any state of facts which could be proved." *Coosa Valley Tech. Coll. v. West*, 299 Ga. App. 171, 174 (2009). The Court should grant a motion to dismiss for failure to state a claim pursuant to O.C.G.A. § 9-11-12(b)(6) if:

> (1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought.

Norman v. Xytex Corp., 310 Ga. 127, 130–31 (2020). "When considering a motion to dismiss for failure to state a claim, a trial court may consider the complaint, the answer, and any exhibits attached to and incorporated into the complaint and answer." *Mark A. Schneider Revocable Trust v. Hardy*, 362 Ga. App. 149, 150 (2021). Moreover, "the trial court is required to take the factual allegations in the complaint as true. But in the absence of any specifically pled facts to support what amount[s] to a legal conclusion couched as fact, the trial court [is] not required to accept this conclusion as true." *Mabra v. SF, Inc.*, 316 Ga. App. 62, 65 (2012).

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ARGUMENT

I. Plaintiff's lawsuit is barred by *res judicata*.

Fulton County contends that *Adams I* should have been dismissed with prejudice pursuant to *Haralson County, et al. v. Solid Solutions One, LLC*, No. S23A0498 (Mar. 17, 2023), in which the Supreme Court ordered dismissal because the plaintiff had sought a waiver of sovereign immunity under Article I, Section II, Paragraph V of the Georgia Constitution ("Paragraph V") yet not complied with its provisions — precisely what occurred in *Adams I*. Like in *Adams I*, the plaintiff in *Haralson* had erred by naming defendants other than the government entity exclusively, as is required for the waiver of sovereign immunity to apply. *See Lovell v. Raffensperger*, 318 Ga. 48, 50-52 (2024). Consequently, the Supreme Court in *Haralson* held the case must be dismissed.

Following the Supreme Court's order remanding *Haralson* back to the trial court with direction to dismiss the case, the trial court correctly interpreted such directive to require that the trial court must dismiss *with* prejudice. *See* Order (May 1, 2023), *Solid Solutions One, LLC v. Haralson County, et al.*, Civil Action No. SUCV2022000079 ("The court therefore concludes that it is required to dismiss this action WITH PREJUDICE") (emphasis in original). Otherwise, the plaintiff in *Haralson* could have simply refiled essentially the same action,[4] as has occurred here. In *Adams I*, however,

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[4] Paragraph V's waiver of sovereign immunity applies only to declaratory judgment actions, which generally always could be refiled because they are forward looking in nature and thus would not have a statute of limitations issue. Paragraph V would therefore largely be meaningless if it did not mandate dismissal *with* prejudice because any action brought pursuant to the waiver of sovereign immunity in Paragraph V without complying therewith could simply be refiled (with the error corrected) and still litigated without there being any real consequence whatsoever.

this Court dismissed Plaintiff's case *without* prejudice, enabling and indeed inviting the present action. *See* Order (Sep. 9, 2024), *Adams I* ("This action is done, but there can be another. Plaintiff can refile, name the correct party, and we will pick up where we left off").

Fulton County believes dismissal of *Adams I* should have been with prejudice, thereby precluding the present action under the doctrine of res judicata. As such, this action should likewise be dismissed with prejudice.

II. Certification of an election by the election superintendent is mandatory.

The Georgia Election Code makes expressly clear that certification of primary and election results is mandatory. There is no provision in the law which allows a superintendent (or individual members thereof such as Plaintiff) to exercise discretion in the carrying out of this mandatory act. Certification shall be performed by 5:00 p.m. on the Monday following the date of the election. The certification of an election result triggers other judicial avenues for addressing fraud allegations, conducting recounts, and reviewing election contest petitions. The mandatory nature of election certification outlined in the Election Code derives from long-established Georgia Supreme Court precedent which remains valid today.

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A. The statutory regime governing certification makes clear that the duty to certify is mandatory.

In prescribing the various powers and duties of election superintendents, the General Assembly has made clear that it is the mandatory duty of the superintendent to certify the returns of all primaries and elections:

> Each superintendent within his or her county or municipality shall exercise all the powers granted to him or her by this chapter and **shall**

> **perform all the duties imposed upon him or her by this chapter, which shall include the following:**
>
> (9) To receive from poll officers the returns of all primaries and elections, to canvass and compute the same, **and to certify the results thereof to such authorities as may be prescribed by law[.]**

O.C.G.A. § 21-2-70(9) (emphasis added). The Election Code section governing the computation of returns and certification by the superintendent again confirms the mandatory nature of certification, and crucially, imposes a statutory deadline by which every county superintendent in the State of Georgia must certify the result:

> (k) As the returns from each precinct are read, computed, and found to be correct or corrected as aforesaid, they shall be recorded on the blanks prepared for the purpose until all the returns from the various precincts which are entitled to be counted shall have been duly recorded; then they shall be added together, announced, and attested by the assistants who made and computed the entries respectively and shall be signed by the superintendent. The consolidated returns **shall then be certified by the superintendent** in the manner required by this chapter. **Such returns shall be certified by the superintendent not later than 5:00 P.M. on the Monday following the date on which such election was held and such returns shall be immediately transmitted to the Secretary of State.**

O.C.G.A. § 21-2-493(k) (emphasis added).

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The General Assembly's use of "shall" in these statutes establishes that certification by county election boards is mandatory. The term "shall" means "required to," and "[d]rafters [of statutes] typically intend and . . . courts typically uphold" the use of "shall" as "mandatory." Black's Law Dictionary (12th ed. 2024). Georgia courts have acknowledged this, explaining that "'[s]hall' is recognized generally as a command, and is mandatory." *Nunnally v. State*, 311 Ga. App. 558, 560 (2011). Thus, "must" and "shall" are synonymous. *State v. Henderson*, 263 Ga. 508, 510 (1993). Hence, like "must," "'[s]hall' is generally construed as a word of command." *Mead v. Sheffield*, 278 Ga. 268, 269 (2004) (applying this principle in construing the Election Code).

This mandatory county-level certification is just an initial step in the overall election certification process. After county superintendents certify, the Secretary of State must "immediately" undertake his own tabulation and canvassing process, O.C.G.A. § 21-2-499(a), and then certify the votes to the Governor. *See id.* § 21-2-499(b). For presidential electors, "[t]he Secretary of State shall also, upon receiving the certified returns . . . proceed to tabulate, compute, and canvass the votes cast for each slate of presidential electors [and thereafter] shall immediately lay them before the Governor." *Id.* If a county board or other superintendent indefinitely refused to certify that county's results (again, a scenario not contemplated in the Election Code), the Secretary of State would likely still comply with his (equally mandatory) duty to report election results, *see* O.C.G.A. § 21-2-499(b)—meaning that that reporting could occur without counting ballots from the county, thereby disenfranchising all of that county's voters. The mandatory nature and timing of county certification therefore plays a crucial role in avoiding disenfranchisement.

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Notably, the Georgia Election Code provides for the election superintendent to use discretion in other aspects of the vote computation process. For example, O.C.G.A. § 21-2-493(b) states that when a superintendent investigates an apparent numerical discrepancy caused by a vote total from a precinct that "exceeds the number of electors in such precinct or exceeds the total number of persons who voted in such precinct or the total number of ballots cast therein," the superintendent "may" order "a recount or recanvass of the votes . . . and a report . . . to the district attorney." *Id.* Similarly, if such a discrepancy occurs in a precinct "in which paper ballots have been used," then "the superintendent may require the production of the ballot box and the recount of the ballots [therein] . . . in the discretion of the superintendent." *Id.* § 21-2-493(c) (emphasis

added). The General Assembly did not, however, give the superintendent such discretion with respect to the certification of election results. None of the statutes and subsections thereof cited by Plaintiff provide a basis for her to refuse to certify election results or otherwise cause delay. (Compl. ¶ 26).

County-level certification serves a specific and limited purpose: to aggregate all the votes from all the precincts in a county and ensure the numerical accuracy of that vote count. O.C.G.A. § 21-2-493.

B. Mandatory certification triggers judicial challenges available for alleged fraud, irregularities, recounts, and other election challenges.

The Georgia Election Code does not give election superintendents (or individual members of board-structured superintendents like the BRE) the ability to delay or deny certification based on personal concerns of fraud or error in the computation of votes or potential recounts or other election contests. Rather, mandatory county-level certification must be performed regardless, and in fact, a superintendent's mandatory certification **triggers** judicial remedies outlined in the Code for such concerns.

Plaintiff claims that she voted against certification of the March 12, 2024 Presidential Preference Primary ("PPP") out of a concern for unspecified fraud which she believes occurred in the way the primary was conducted. (Compl. ¶¶ 48-49). Her claim is baseless and not supported by any facts. But even if she had presented such evidence, the mandatory language of county-level election certification controls even where actual "error or fraud is discovered." O.C.G.A. § 21-2-493(i). Even in that

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situation, "the superintendent **shall compute and certify the votes justly,**[5] **regardless of any fraudulent or erroneous returns presented to him or her, and shall report the facts to the appropriate district attorney for action."** *Id.* (emphasis added). The law could not be clearer: even when presented with possible fraudulent or erroneous returns, the Election Code still requires that the superintendent certify the election.

The mandatory nature of election certification is also confirmed by the fact that no recount or recanvassing in close elections can occur until certification has taken place. Whenever the difference in the number of votes between candidates shall not be more than one-half of 1 percent, a candidate, "**within a period of two business days following the certification of the election results, shall have the right to a recount of the votes cast,** if such request is made in writing by the losing candidate." O.C.G.A. § 21-2-495(c)(1) (emphasis added). The same timeline applies to requesting a recount of the votes on a constitutional amendment or binding referendum. *Id.* § 21-2-495(c)(2). If a superintendent could delay or deny certification, then a candidate's right to request a recount would be unduly delayed in clear violation of the law.

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Likewise, the time in which a candidate must file an election contest petition stems from a superintendent's mandatory certification. Specifically, "[a] petition to contest the result of a primary or election shall be filed **"within five days after the official consolidation of the returns** of that particular office or question **and**

[5] The statute's reference to computing and certifying the votes "justly" confers no discretion over whether to certify. It conveys that certification is to occur despite any possible "error or fraud," *id. See* Black's Law Dictionary (12th ed. 2004) (defining "just" as "[l]egally right").

certification thereof by the election official having responsibility for taking such action under this chapter[.]" O.C.G.A. § 21-2-524(a) (emphasis added). The same timing applies to filing an election contest petition following a recount. *Id.* If a supertintendent could delay or deny certification, then a candidate's right to contest an election would be delayed in clear violation of the law.

Notably, among the five grounds for filing an election contest petition are "[m]isconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result;" [w]hen illegal votes have been received or legal votes rejected at the polls sufficient to change or place in doubt the result;" and "[f]or any error in counting the votes or declaring the result of the primary or election, if such error would change the result[.]" O.C.G.A. §§ 21-2-524(1), (3), and (4). If an election contest changes the results, moreover, Georgia law authorizes the superintendent (and the Secretary of State) to recertify the election. *See* O.C.G.A. §§ 21-2-493(l), -499(a).

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As such, the Georgia Election Code provides several avenues for addressing fraud allegations, including the superintendent's reporting the facts to the district attorney for action (O.C.G.A. § 21-2-493(i); possible criminal prosecution for various violations (O.C.G.A. § 21-2-560 to § 21-2-604); and election contest petitions (O.C.G.A. §§ 21-2-522, -524). Each of these avenues begins with the superintendent's certification of the election result.

Nothing in the law allows Plaintiff to address alleged fraud by withholding, refusing, or delaying certification until her personal, arbitrary demands are met.

C. Long-settled Supreme Court precedent further dictates that election certification is mandatory.

On several occasions, the Supreme Court of Georgia has made clear that the certification of an election result is a mandatory process which allows no room for discretion by individual canvassers and election superintendents. These decisions by the Georgia Supreme Court are not simply historical footnotes or anomalies. Rather, these decisions remain the law today. Georgia law has long treated election certification as non-discretionary.

In *Tanner v. Deen*, the Georgia Supreme Court held that certain county superintendents' refusal to certify an election was subject to mandamus, and it ordered the lower court to issue a writ of mandamus requiring the superintendents to certify. 108 Ga. 95, 33 S.E. 832, 835-36 (1899). Rejecting the superintendents' contention that the returns of a certain precinct were invalid, the court noted that "most, if not all, the points made against the validity of these returns involved questions of law only." *Id.* at 835. And the superintendents, the court explained, "were not selected for their knowledge of the law," and therefore had no authority to make legal determinations as to the validity of any election returns. *Id.* The Court in *Tanner* further explained:

> Were the law otherwise, it would be within the power of one superintendent to withdraw from his duties, or refuse to sign the certificate, and thus render illegal and void the election in that precinct. If he were a violent partisan, and saw the election going against his party, he might refuse to discharge his duty, and by this conduct perhaps defeat the will of the people in his district or in his county, or possibly even in his state.

Id. at 835.

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In *Davis v. Warde*, the Supreme Court rejected attempts by the mayor and city council (acting as the canvassing board) from excluding women from voting, holding that:

> The canvassing board can not go behind the returns of the election officers to determine the results of an election … **The duties of canvassers are purely ministerial; they perform the mathematical act of tabulating the votes of the different precincts as the returns come to them** … The determination as to the result of an election by a canvass of the returns by the city council is not a judicial act, but is purely a matter of calculation.

155 Ga. 748, 118 S.E. 378, 391-392 (Ga. 1923) (citations omitted) (emphasis added).

Bacon v. Black, 162 Ga. 222, 133 S.E. 251 (1926), is likewise on point. There, the Georgia Supreme Court rejected the notion that the superintendents of election returns "could correct either fraudulent errors or mistakes[,]" holding that "[t]he duties of the managers or superintendents of election who are required by law to assemble at the court-house and consolidate the vote of the county are purely ministerial. The determination of the judicial question affecting the result in such county elections is confined to the remedy of contest as provided by law." *Id.* at 253. Similarly, in *Thompson v. Talmadge*, the Georgia Supreme Court explicitly characterized canvassing (a duty the 1945 Georgia Constitution imposed on the General Assembly) as the "mathematical process of adding the number of votes," and it cited *Bacon* and *Warde* (among other cases) for the rule that canvassing and certification were purely ministerial, non-discretionary duties. 201 Ga. 867, 877 (1947). The court explained:

> [I]n publishing the returns and declaring the results the members of the General Assembly were performing a strict and precise duty identical in character with that which rests upon any and all persons who are merely authorized to canvass. **They were not, while performing that duty, exercising or authorized to exercise any discretion, but were simply performing the ministerial act of disclosing to the public**

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> **the official election returns that had been prepared by the election managers.**
> ...
>
> The General Assembly, as canvassers of the election returns in this case, were subject to the general, if not indeed the universal, rule of law applicable to election canvassers. That rule is that **they are given no discretionary power except to determine if the returns are in proper form and executed by the proper officials and to pronounce the mathematical result,** unless additional authority is expressed. They can neither receive nor consider any extraneous information or evidence, but must look only to the contents of the election returns.

Id. at 876–77 (emphases added).

Through these decisions, the Georgia Supreme Court has long made clear that the duty to certify election results—now placed in the hands of superintendents as defined by the Election Code—is mandatory and ministerial in nature. Plaintiff points to no case or statute contradicting the mandatory nature of county-level certification of primary or election results.

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III. Defendant has fully complied with the law with respect to providing election materials to board members.

Because county-level certification is clearly mandatory, Plaintiff's declaratory relief claim regarding election materials falls with her failed arguments. But even if the Court were to weigh her assertion that she is entitled election materials, it will find her claims to be legally baseless.

In a quixotic effort to obtain election materials which the law does not require that she personally receive, Plaintiff manufactures a controversy between herself and the BRE Director where none exists. (Compl. ¶¶ 31, 34-36, 38-64). Attempting to create a pretext for her demand for unfettered access to "Election Materials and Processes," Plaintiff claims that the Director of the BRE has withheld various materials from her,

preventing her from reviewing the materials necessary to vote in favor of certifying the March 12, 2024 Presidential Preference Primary ("PPP"). (*Id.* ¶ 44). Plaintiff's arguments fail for two reasons. First, the BRE has properly delegated duties to the Director, and Plaintiff cannot obtain declaratory relief from this Court simply because she cannot convince the rest of the BRE to adopt her proposals. Second, outside of her erroneous belief that county-level certification is discretionary, Plaintiff provides no legal basis for asserting that she is entitled to review the election materials. Third, Plaintiff has in fact received from the Director the election materials related to tabulation, canvassing, and certification which she has requested, even though the law does not mandate what individual election board members are entitled to receive.

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A. Plaintiff provides no valid legal basis to assert she is entitled to personally receive all election materials.

Plaintiff can point to no other legal basis for which she is entitled to unfettered access to election materials. Notably, the SEB's recent "Grubbs Rule" (or "Examination Rule") would allow any individual county election board member to "examine all election related documentation" before certification, allow county boards to devise their own "method[s]" for counting votes whenever they suspect "fraud," and condition certification on new requirements that appear nowhere in the election code. Ga. Comp. R & Regs. 183-1-12-.12(f)–(g). This rule took effect September 16, 2024, long after Plaintiff commenced litigation against the BRE on May 22, 2024. The question of this rule's validity is currently before this Court, and unless and until this Court deems this rule to be enforceable, Plaintiff remains without any legal foundation upon which her claims may stand.

B. Defendant has provided Plaintiff with all election materials necessary to fulfill her statutory duty to certify the results of the election.

Plaintiff has defined Election Materials and Processes to comprise of Qualified Voter List, Voter Check-in List, Poll Open and Close Tapes, Ballot Recap Sheet, Provisional Ballot Recap Sheets, Voting Ballot Removal Forms, Drop Box Ballot Forms, Cast Vote Record List, Absentee Ballot Records and Election Processes. (Compl. ¶ 32). Plaintiff alleges that the Election Material and Processes are the totality of the election processes that the election superintendent is required by law to oversee and implement. (Compl. ¶ 33). Plaintiff further alleges that that she was repeatedly denied access to any Election Materials and Processes needed to verify the returns and results of the PPP, and was left to rely on the bare representations of the Director. (Compl. ¶35). In an attempt to excuse the blatant disregard of her statutorily mandated duty to certify the results of the PPP, Plaintiff argues that without access to the Election Materials and Processes, she was unable to fulfill her statutory duties and therefore abstained from certifying the election returns. (Compl. ¶¶ 48, 74).

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The General Assembly meticulously drafted the Georgia Election Code, ensuring to provide great detail regarding the information required for computation and canvassing. *See* O.C.G.A. § 21-2-493. During canvasing, the superintendent will review various pieces of precinct-level information, including the number of electors in each precinct, *see* O.C.G.A. § 21-2-493(b), the number of persons who voted in each precinct, *id*., the number of ballots cast in each precinct, *id*., the unsealed and sealed returns of votes from each precinct, O.C.G.A. §§ 21-2-493(g) to (h), and, for each precinct using voting machines, the records from the general returns showing the machine counters

and the internal records showing the machine counters prior to the start of the election. O.C.G.A. § 21-2-493(f).

It is not unless and until a numerical discrepancy is discovered that the statute allows for the investigation or examination of documents relating to the precinct in which said discrepancy has been found. *See e.g.*, O.C.G.A. § 21-2-493(b). In each instance wherein a superintendent is charged with investigating a numerical discrepancy the statute specifies the documents, related to the precinct at issue, which must be examined. O.C.G.A. § 21-2-493(b),(g),(h). Any investigation or examination of documents required by statute is conducted for the stated purpose of reconciling a numerical discrepancy. See e.g., O.C.G.A. § 21-2-493(g). Notably, not every discrepancy is resolved through an investigation or the examination of documents. O.C.G.A. § 21-2-493(c),(e),(f). It is only upon finding a numerical discrepancy that a superintendent must, in certain circumstances, review limited relevant documents for the purpose of reconciling the numerical record. O.C.G.A. § 21-2-493. Accordingly, Plaintiff's desire to "reconcile" election results by reviewing numerous documents several days in advance of the close of the polls on the day of a primary or election, and prior to finding any discrepancy in the computation of the election results is contrary to Georgia law.

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On the morning of certification of the PPP, the Director provided all tabulation documents and records needed to conduct certification. The documents included, but were not limited to, ballot recap sheets, opening and closing poll tapes, scanner recap sheets, absentee ballot sheets, and statement of votes cast. Plaintiff was not denied access to any election information or materials that are statutorily required to certify the returns and results of the PPP. Plaintiff knowingly disregarded century-old law and unambiguous statutory authority defining her duties as a member of the BRE, and

instead injects her own definition of well-settled law as her guiding authority. Plaintiff's inability to timely conduct the statutorily defined computation and canvassing procedure, like many members serving the BRE before and beside her, does not amount to a failure in the system. Plaintiff's failure to certify the election results amounts to nothing more than a willful violation of long-standing Georgia law, and her oath to the BRE.

Upon receipt of Plaintiff's unilateral request for unavailable documents, the Director promptly responded to Plaintiff with a substantive explanation of the reconciliation process and timeline. (Compl. Exhibit 4). The multi-step post-election reconciliation process is conducted by a designated team of individuals and spans the duration of several days. *Id*. The reconciliation process consists of, but is not limited to, verifying tabulation tapes, reconciling ballot recap sheets, compiling and sorting election documents, addressing document discrepancies, retrieving missing signatures from poll workers, and locating any missing documents identified during the reconciliation process. *Id.* Despite the inability to fulfill Plaintiff's request for physical documents on an accelerated timeline, the Director invited Plaintiff to observe the reconciliation process in a good faith attempt to address her concerns and maintain utmost transparency. *Id.* Plaintiff accepted. Plaintiff's contention that data provided to the BRE by the Director, after conducting a Secretary of State-approved reconciliation process, amounts to "bare representations" is absurd and wholly without merit.

Aside from Plaintiff's request being devoid of any legal basis whatsoever, her request also exceeded the scope of the agreed-upon list of documents to be provided to the BRE. The BRE agreed to be provided with the Post-Election Record Retention Documents required by the secretary of State, contemporaneously with the transmission

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to the Secretary of State by its due date. (Compl. Exhibit 4). After this agreement, Plaintiff unilaterally requested to be furnished with numerous documents several days in advance of the PPP—neither Georgia law nor the Secretary of State require or expect election materials to be readily available to the public prior to the close of the polls on the day of a primary. Compl. Exhibit 2. Attempts to address Plaintiff's unfeasible request, and subsequent upheaval, placed undue burden on election staff who had been working tirelessly to conduct an election.

IV. Plaintiff acknowledges that she could not possibly review prior to the statutory deadline for certification all of the election materials that she insists she is entitled to review, further belying her claim.

Notwithstanding the numerous issues with Plaintiff's position discussed above, Plaintiff's own Complaint demonstrates the irrationality of her legal theory and the absence of any sound basis for finding in her favor. According to Plaintiff, she was permitted less than seven (7) hours to review the election records she had been provided. Complaint ¶¶ 70-71. Plaintiff explains that despite being allotted seven (7) hours she "only meaningfully had 5.5 hours to review the Election Materials" and in "this truncated time," Plaintiff was only "able to review documents and records from the Primary for 10 of Fulton County's more than 450 voting precincts." *Id.* In a letter to BRE Chair, Plaintiff insists that she "worked diligently throughout the 6.5[6] hours" but still "was able to review only a tiny sliver of the data and information" that she claims needed review. Plaintiff's Letter to BRE Chair is attached hereto as Exhibit 3. Given that

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[6] In the previously filed matter *Julie Adams v. Fulton County Board of Elections and Registration, a/k/a Fulton County Board of Registration and Elections, and Nadine Williams*, Civil Action File No. 24CV006566, Plaintiff filed a Renewed Motion for Interlocutory Relief stating that she had 6.5 hours to review the Election Materials.

it took Plaintiff between 5.5 and 6.5 hours to review the data for just ten (10) of Fulton *County's* precincts, Plaintiff would need more than *300 hours* to review the data for all 481 precincts.[7] If Plaintiff committed to reviewing this information nonstop, 24 hours a day, it would take Plaintiff *thirteen* full days to review the data of all precincts. However, certification *must* occur less than one week after an election. *See* O.C.G.A. § 21-2-493(k) ("returns shall be certified by the superintendent not later than 5:00 P.M. on the Monday following the date on which such election was held").

If Plaintiff has the legal duty to review all of this data prior to certification – as Plaintiff claims she does in her present lawsuit – that would mean that she is entitled to records from an election at least one week *before* that election even occurs, a legal and factual impossibility (naturally, numerous election result materials cannot be provided before voting is complete and the polls close). And that is assuming Plaintiff does not sleep, or do anything else other than review election records, for thirteen whole days. Taking a more realistic approach that Plaintiff reviews these materials for ten hours every day, including on weekends, Plaintiff would still need *30 days* to review all materials.

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Furthermore, Plaintiff contends that there is additional information that she would like to receive, stating that she wants to see "**all** the data, information, materials, and records from each of the 481 polling locations in Fulton County" to review for possible discrepancies. *Id*. at p. 2 (emphasis added). Therefore, Plaintiff would require

[7] Plaintiff would be responsible for reviewing this information herself and could not share the information with others outside of the BRE pending certification.

even more time to review everything that she claims she must assess prior to certifying.

Given that these records literally cannot exist until *after* the election occurs, and that the law dictates certification commence after the close of the polls on the day of a primary or election, Plaintiff essentially argues to this Court that *no election* should *ever* be certified according to the statutory deadlines imposed by Georgia law because Plaintiff would need, at a minimum, 30 days to become satisfied that the election can be certified. This is an absurd result and one this Court should not seriously consider.

CONCLUSION

For these reasons, Defendant Fulton County respectfully submits this Trial Brief and asks the Court to dismiss the Plaintiff's Complaint for Declaratory Relief pursuant to O.C.G.A. § 9-11-12(b)(6).

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[*Signature on the following page*]

Respectfully submitted this 27th day of September, 2024.

/s/ Joseph J. Siegelman
Joseph J. Siegelman
Georgia Bar Number 837090
Sanjay S. Karnik (*pro hac vice pending*)
Illinois Bar Number 6300156
Rachel N. Lugay
Georgia Bar Number 429289

CHILIVIS, GRUBMAN, WARNER & BERRY LLP
1834 Independence Square
Atlanta, Georgia 30338
Telephone: 404-233-4171
Facsimile: 404-261-2842
jsiegelman@cglawfirm.com
rlugay@cglawfirm.com

159 N. Sangamon St., Ste. 313A
Chicago, Illinois 60607
Telephone: 872-260-6679
Facsimile: 404-261-2842
skarnik@cglawfirm.com

Attorneys for Defendant

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